IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 2ND MARCH 2007 / 11TH PHALGUNA 1928

OP.No. 534 of 2001(L)

PETITIONER:

SADASIVAN NAIR,
EDISONS BUILDING,
T.C.NO.3/1717, KESAVADASAPURAM,
THIRUVANANTHAPURAM.

BY ADV. SRI.P.B.SURESH KUMAR(QUILON)
SRI.P.SHAMSUDEEN

RESPONDENTS:
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1. **THE KERALA STATE ELECTRICITY BOARD,**
REPRESENTED BY ITS SECRETARY,
VAIDYUTHI BHAVAN, THIRUVANANTHAPURAM.

2. **THE DEPUTY CHIEF ENGINEER,**
ANTI POWER THEFT SQUAD,
KERALA STATE ELECTRICITY BOARD,
VAIDHYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM.

3. **THE ASSISTANT EXECUTIVE ENGINEER,**
THE KERALA STATE ELECTRICITY BOARD,
ELECTRICAL MAJOR SECTION, KESAVADASAPURAM,
THIRUVANANTHAPURAM.

BY ADV. SRI. C.E. UNNIKRISHNAN, SC, KSEB

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 02/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.534/2001 L

ORDER ON C.M.P.NO.884/2001 IN O.P.NO.534/2001 L

DISMISSED

02/03/2007 **SD/- PIUS C. KURIAKOSE, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE BILL NO.006946 ISSUED FROM THE OFFICE OF THE THIRD RESPONDENT DTD. 5/09/2000.**

EXT.P2: **COPY OF THE COMMUNICATION SENT BY THE THIRD RESPONDENT TO THE PETITIONER DTD. 5/09/2000.**

EXT.P3: **COPY OF THE APPEAL SUBMITTED BY THE PETITIONER BEFORE THE SECOND RESPONDENT DTD. 10/09/2000.**

EXT,P4: **COPY OF ORDER NO.VIG.APTS/AV-1580/2000/1397 OF THE SECOND RESPONDENT DTD. 30/11/2000.**

/TRUE COPY/

Kss

PIUS C. KURIAKOSE, J.

O.P. No. 534 OF 2001

Dated this the 2nd day of March, 2007

JUDGMENT

Sri.P.B.Suresh Kumar, counsel for the petitioner would assail Ext.P4 order by which Ext.P1 additional bill is confirmed by the Deputy Chief Engineer. My attention was drawn by the learned counsel to Exts.P1 bill and Ext.P2 statement. Ext.P2 will show that the additional bill was issued to the petitioner on two reasons. The first reason is that though the connection was given to the petitioner's premises for domestic purposes, he has been using the energy supplied with effect from January 1999 for commercial purpose. i.e., for the conduct of a Sidda Vaidyasala, a private hospital. A total amount of Rs.61,314/- has been assessed on that account. The second reason is that the first and second phase of the meter installed in the premises of the petitioner were found to be not recording correct consumption from February 2000 and hence a further amount of Rs.44,031/- is assessed as per rules i.e. at two times the recorded consumption. Even though Mr.Suresh Kumar would assail the correctness of both the reasons, I am not impressed by the arguments raised challenging the first reason that consumer of a domestic connection cannot use that connection for other purposes. But more serious arguments were addressed by the learned counsel

with reference to the second reason i.e. non-recording of consumption due to fault of meter. My attention was drawn by the learned counsel to the judgment of Supreme Court in **M.P.E.B and others V. Smt.Basanti Bai** [AIR 1988 SC 71] and to that of a Division Bench of this Court in **Nirmala Metal Industries V. K.S.E.B** [2006(3) KLT 465]. Relying on these judgments the learned counsel would invite my attention to Section 26 (6) of the Electricity Act also and submit that it was obligatory on the part of the Electricity Board to refer the question whether the meter was faulty to the Electrical Inspector whose decision will be final.

2. Mr.C.E. Unikrishnan, Standing Counsel for the Electricity Board will make a very sincere endavour to resist the arguments of Mr.Suresh Kumar. Counsel for the Electricity Board would refer to the judgment of a Division Bench of this Court in **Southern India Marine Products Co. V. K.S.E.B** [1995 (2) KLT 167]. He also submitted that the reason stated by the officers of the Electricity Board as to why it is not necessary to refer the dispute to the Electrical Inspector are good reasons. I am unable to accept the argument of the Standing Counsel since it is not alleged at all that there was any wiring defect or any meter tampering from the side of the petitioner. I am bound by the judgment of the Supreme Court which was followed by the Division Bench in **Nirmala Metal Industry**'s(supra) case.

The result is that Exts.P1 and P4 to the extent they demand current charges from the petitioner on account of the second reason i.e. non-recording of consumption in the meter will stand quashed. The respondents are directed to refund proportionate amount to the petitioner or to adjust the refundable amounts against the future bills which may be issued on the petitioner. The Original Petition is allowed to the above extent. No costs.

PIUS C. KURIAKOSE, JUDGE

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